

## § 2.281

Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Department FOIA and Privacy Act regulations are found at 43 CFR part 2, subparts B and D.

(e) Nothing in this subpart is intended to impede the appropriate disclosure under applicable laws of Department information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This subpart only provides guidance for the internal operations of the Department, and neither creates nor is intended to create any enforceable right or benefit against the United States.

### § 2.281 What is the Department's policy on granting requests for employee testimony or Department records?

(a) Except for proceedings covered by § 2.80(c) and (d), it is the Department's general policy not to allow its employees to testify or to produce Department records either upon request or by subpoena. However, if you request in writing, the Department will consider whether to allow testimony or production of records under this subpart. The Department's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Department employee may testify or produce records in any proceeding to which this subpart applies unless authorized by the Department under §§ 2.80 through 2.90 *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

#### RESPONSIBILITIES OF REQUESTERS

### § 2.282 How can I obtain employee testimony or Department records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a "Touhy Request;" see § 2.84 and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a check for costs to the Department of the Interior, in accordance with § 2.85, if your Touhy Request is granted.

(b) To obtain official Department records, you must submit:

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(1) A Touhy Request; and

(2) A Statement that you agree to pay the costs of duplication in accordance with 43 CFR part 2, appendix A, if your Touhy Request is granted.

(c) You must send your Touhy Request to:

(1) The employee's office address;

(2) The official in charge of the employee's bureau, division, office or agency; and

(3) The appropriate unit of the Solicitor's Office.

(d) To obtain employee testimony or records of the Office of Inspector General, you must send your Touhy Request to the General Counsel for the Office of Inspector General.

(e) 43 CFR part 2, appendix B contains a list of the addresses of the Department's bureaus and offices and the units of the Solicitor's Office. The General Counsel for the Inspector General is located at the address for the Office of the Inspector General. If you do not know the employee's address, you may obtain it from the employee's bureau or office.

### § 2.283 If I serve a subpoena duces tecum, must I also submit a Touhy request?

Yes. If you serve a subpoena for employee testimony, you also must submit a request under *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)? If you serve a subpoena *duces tecum* for records in the possession of the Department, you also must submit a Touhy Request.

### § 2.284 What information must I put in my Touhy Request?

Your Touhy Request must:

(a) Identify the employee or record;

(b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;

(c) Identify the parties to your proceeding and any known relationships they have to the Department's mission or programs;

(d) Show that the desired testimony or records are not reasonably available from any other source;

(e) Show that no record could be provided and used in lieu of employee testimony;